

1964

News release on International Convention of Amchem Products, Inc., in Ambler, Pa.

By Mr. SPARKMAN:

Citation awarded to Senator RUSSELL B. LONG, chairman, Subcommittee on Monopoly, Senate Small Business Committee, at the Conference on Dual Distribution, at the International Inn, Washington, D.C., on September 22, 1964.

FIRST ANNIVERSARY OF SENATE VOTE ON LIMITED NUCLEAR TEST BAN TREATY

Mr. PASTORE. Mr. President, in these closing days of the 2d session of the 88th Congress the demands upon our time are quite heavy and we are all extremely busy in striving to complete our legislative duties and fulfill our responsibilities on those few items still remaining. I would hope, however, that we are not so busy that we can not take time to give appropriate recognition to a most significant event which took place 1 year ago today here in this great body—the Senate.

One year ago today after very detailed hearings and exhaustive studies—after very thorough debate—the Senate, by a vote of 80 to 19, gave the President of the United States our advice and consent to a nuclear test ban treaty with the United Kingdom and the Soviet Union. Over 100 nations have since joined us and have placed their signatures to this treaty.

There was no doubt in my mind when I stood on this floor 1 year ago and voted in favor of the treaty. There, similarly, is no doubt in my mind today—1 year later—that our actions were correct.

To those of my colleagues—the overwhelming majority on both sides of the aisle who voted in favor of the treaty, I say: Let us take justifiable pride in the fact that we clearly and forthrightly made a right decision. Let us on this, the first anniversary of our historic-making vote pause and give thought and thanksgiving to this past year when our atmosphere has been free from additional radioactive pollution. Let us at the same time pause and prayfully hope that this, the first anniversary, will be followed year after year by additional anniversaries.

To those of my colleagues—a very small minority that had doubts—who for one or more reasons did not see their way clear to vote favorably on this treaty, I would hope that the passing year has given you some small assurance—some reason—to realize what we have accomplished.

I believe this—on the first anniversary on the formal Senate action—that we who participated in that deliberation can take justifiable pride in our action and that the people, not only of the United States but of the entire world, can take consolation and hope in the knowledge that through efforts of the three great powers, subsequently joined by others, that this world is a little better—a little less dangerous—a little cleaner world in which to live today—than it might have been had this treaty not been signed by our President and

approved by the Senate of the United States.

Mr. ANDERSON. Mr. President, a year ago today the Senate ratified the nuclear test ban treaty. I voted for that treaty. I thought then that my vote was a right one, and the passage of a year has left me even more convinced that ratification was right.

As all of us remember, the Joint Chiefs of Staff testified that certain “safeguards” were essential, in order to make the treaty acceptable to our military. President Kennedy gave assurance that those safeguards would be implemented; and President Johnson, by subsequent action, continued the implementation of those essential safeguards.

In order to carry out its responsibilities to continue underground nuclear testing, and to maintain its laboratories at a high level of skill and morale, and to stand ready to resume testing in the atmosphere, should that become necessary, the Atomic Energy Commission requested additional funds for the weapons program. Congress appropriated those funds. Certain installations in New Mexico—particularly the Los Alamos Scientific Laboratory and the Sandia Corporation—have played an important role in fulfilling the “safeguard” pledge. Additionally, in cooperation with the Department of Defense, the Los Alamos Scientific Laboratory and the Sandia Corporation have developed instrumentation for satellites capable of detecting nuclear explosions in the atmosphere and in outer space. These satellites are aloft, and are transmitting valuable data as a vital element in our detection network.

Furthermore, about the middle of next month the Atomic Energy Commission and the Department of Defense will continue exercises in the Pacific to assure this Nation's security in the field of nuclear weapons preparedness. I ask unanimous consent that a joint AEC-Department of Defense release be printed at this point in the RECORD.

There being no objection, the release was ordered to be printed in the RECORD, as follows:

DOD-AEC IMPLEMENT TEST READINESS SAFEGUARD SCHEDULE MID-OCTOBER PACIFIC EXERCISES

Over a year ago (August 23, 1963), the Atomic Energy Commission and the Department of Defense outlined to the U.S. Senate safeguards to the limited nuclear test ban treaty. These included: “The maintenance of the facilities and resources necessary to institute promptly nuclear tests in the atmosphere should they be deemed essential to our national security or should the treaty or any of its terms be abrogated by the Soviet Union.”

Early this year it was decided to have, by January 1, 1965, the capability to proceed with tests of nuclear weapons within 2 or 3 months from the date of any abrogation of the test ban treaty.

While such readiness is necessary in the interest of national security, the U.S. position has always been that it earnestly hopes there will never be an abrogation of the treaty, and that its capability to resume such testing will not have to be exercised.

In this spirit measures have been taken to implement the safeguards described to the Senate a year ago. These include air and sea exercises, without any nuclear explosion,

to be carried out about mid-October in the vicinity of Johnston Island in the Pacific. The exercises are expected to be concluded in early November.

Mr. ANDERSON. But, Mr. President, beyond this scientific and technical progress and alert conditions, the year has produced a healthy and welcome lessening of tensions between the nuclear camps. I believe the large majority of Americans appreciate this diminution of the nuclear-arms race.

On September 17, 1963—a week before the Senate voted on the treaty—I cited, in remarks in this Chamber, some sound reasons for ratification of the treaty. In the course of those remarks, I presented a resolution by the Los Alamos Chapter of the Federation of American Scientists. One significant part of that resolution—referring to the treaty—is worth repeating today:

It formally recognizes the idea that world peace can be best constructed by the successful implementation of limited practical steps—a view long advocated in American foreign policy.

Mr. President, this statement recognized that it has been the policy of this administration and that of its predecessors to take all reasonable steps to advance the cause of world peace. The test ban treaty we ratified a year ago today was one of those long steps.

Mr. CASE. Mr. President, as a member of the Committee on Armed Services, I fully recognize that our country must remain preeminently strong militarily in order to be able to protect the security of the United States and freedom everywhere. But I also recognize the equally important need to try to control the awesome threat of modern weapons, for unless safeguarded alternatives to the arms race are found, the danger of nuclear war through accident, miscalculation, or some irrational act will continue to increase; and if such a war should occur, there could be no real victory.

When the Senate gave its approval to the limited nuclear test ban treaty, a year ago, we took our first significant step toward the control of nuclear weapons. It was a cautious and well-considered step. Although our security interests are protected by a withdrawal clause, the world is a saner and safer place for all mankind as long as the treaty is in force.

It was also a step consistent with the policies of every administration since the end of World War II. As a Republican, I am particularly proud of the efforts undertaken by the Eisenhower administration toward the verifiable control and reduction of worldwide armaments, efforts which included the first proposal for a nuclear test ban.

Earlier, President Eisenhower had proposed an “atoms for peace” program that led to the establishment of the International Atomic Energy Agency to promote the peaceful uses of atomic energy, under appropriate international safeguards. Other proposals first put forward by President Eisenhower were an inspected cutoff in the production of fissionable materials for weapons purposes; the use of outer space exclusively

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for peaceful purposes; the creation of inspection systems to guard against surprise attack; the first formal United States program for general and complete disarmament, under effective international control; and the creation in the Department of State of a disarmament administration. Out of this grew the U.S. Arms Control and Disarmament Agency.

None of these was a partisan effort. All of them received bipartisan support, rooted in the conviction that the search for peace is an undertaking in the national interest which transcends partisan, political considerations. This was never more evident than in the part played by the distinguished minority leader in securing approval of the test ban treaty. It was ratified by an overwhelming majority of Senators from each side of the aisle. I am proud to have been one of them.

Mr. GORE. Mr. President, today marks the first anniversary of a historic vote in this Chamber.

On September 24, 1963, this body, in exercising its responsibilities under the Constitution, after many days of hearings and debate, gave its advice and consent to ratification of the limited nuclear test ban treaty. The ratification by the Senate was an overwhelming one; there were 80 votes for the treaty, and only 19 against it.

Achievement of the treaty will go down in history, in my view, as a turning point in United States relations with the Soviet Union. I believe that the treaty has marked some easing of cold war tensions with the Soviet Union. Our will to resist any encroachment on the free world by the Soviet Union or any Communist regime remains as strong as ever; and our military strength remains unimpaired by the treaty.

However, the treaty does illustrate that areas of mutual interest between the two sides do exist, and that foremost among those areas is the avoidance of nuclear war.

The final achievement of success illustrates the value of patient and persistent pursuit of objectives that are in the interests of the United States and of all the world. These objectives were pursued by both a Republican administration and a Democratic administration. I am proud to say that I early supported a ban on nuclear tests in the air. It was a pleasure to support the treaty when it was being considered by the Senate last year.

As a member of the Joint Committee on Atomic Energy, I have been directly concerned with the development of the nuclear might of the United States. As a member of the Committee on Foreign Relations, I have been deeply involved in the development and conduct of our foreign policy.

It has long been my belief that the United States, which took the lead in the creation and development of nuclear weapons, has a burden of responsibility to seek agreements to control nuclear weapons.

As Senate adviser to the U.S. delegation to the Conference on the Discontinuance of Nuclear Weapons Tests, I

am proud that I was in attendance when that Conference first convened, on October 30, 1958. From that time until the time when the protracted and often discouraging series of negotiations culminated in success, almost 5 years later, I carefully followed the progress of test-ban discussions in Geneva and elsewhere.

Many countries signed and ratified the treaty before the U.S. Senate took that action, and many other countries have done so since. At the present moment, 105 countries are signatories to this historic document. Only two major countries in this world—Communist China and France—have not seen fit to join the vast majority of mankind in adhering to the treaty.

During the past year, there has been a total absence of nuclear explosions in the atmosphere, underwater, or in space. There has been, therefore, no increase in the amount of radioactive debris in the air. Radioactive fallout still exists in the atmosphere, from tests conducted prior to the signing of this historic treaty. This remaining fallout, which, admittedly, most scientists do not consider hazardous, and which continues to decay, will be with us, unfortunately, for many years to come.

The treaty was described by the late, beloved President Kennedy as a "first step." It is, indeed, a first step toward inhibiting the nuclear-arms race, and a first step toward bettering world relations. As I said last year in my speech on the floor of the Senate, in support of this treaty:

What we are dealing with is one of the means of mass destruction; and we are dealing with it in a limited way, at that. But, even so, the treaty represents, not disarmament, but a pause in a conflict between societies on a collision course. I welcome that pause. I invest faith in the human race, and faith in the ability of the United States to maintain a position of moral and political leadership, of technological and military superiority; and I invest faith in the will and the determination of our people to take whatever steps may become necessary to preserve their freedom.

The faith of the late President has, I believe, been justified. The past year has seen much international unrest—in Asia, in Africa, and in the deepening schism within the Communist world. But the people of this planet have rested easier, in my opinion, because that first step—the banning of atmospheric, underwater, and space nuclear tests, was ratified by the U.S. Senate, last September 24.

It is my hope that the future may bring more occasions to commemorate even greater contributions toward peace. But in the meantime, all the Members of this body can take pride in the success of the first year of the nuclear test ban treaty and in their contributions to the universal quest for peace.

Events of the past year have fully vindicated the programs of responsibility in policy and restraint in action that have dominated U.S. foreign policy since 1945. This policy must continue.

Mr. COOPER. Mr. President, 1 year ago, together with 80 Members of the Senate, including 26 of my Republican colleagues, I voted to ratify the limited nuclear test ban treaty, which grew out

of negotiations begun under President Eisenhower and completed under the late President Kennedy. Today, after more than 100 nations of the world have acceded to the treaty, the responsibility that the Senate had in examining the treaty is not lessened, but it is in fact increased, because the security of our country and the protection of its people and its free institutions remain paramount.

When I spoke in the Senate on September 20, 1963, before ratification of the treaty, I said that I believed we had to determine which was the greatest risk—failing to take a first step toward breaking the cycle of the nuclear arms race or risking the chance that either the Soviet Union might breach the treaty or that it had at that time obtained nuclear superiority. Recognizing that the Soviet Union might attempt to break the treaty, I noted that the United States could immediately abrogate the treaty if our security and interests were jeopardized, and I also said that the true test of the effectiveness and the purpose of this treaty lay ahead. That test would be found in the conduct of the Soviet Union, not only in respect of nuclear tests, but in its willingness to settle issues, which cause the confrontations and the arms race.

I cannot say that any great advances have been made in the last year toward just settlements of the issues which caused the confrontations between the United States and the Soviet Union, and I must say that the recent claim by Mr. Khrushchev of the Soviet development of weapons of great destructive power does not put at rest the concern this Nation has about the intentions of the Soviet Union.

Today I think it is important to recall that the Joint Chiefs of Staff gave their approval to this treaty, but included certain conditions. During the colloquy with the distinguished senior Senator from Georgia [Mr. RUSSELL], and the distinguished Senator from Mississippi [Mr. STENNIS], on last July 29, when the Senate was considering the Defense appropriations for this fiscal year, I asked them whether the Atomic Energy Commission and the Department of Defense were fulfilling their responsibilities in maintaining safeguards against any breach of the treaty. I also asked whether our Government was maintaining laboratories and personnel for nuclear technology, about the status of plans and facilities for undertaking tests in the atmosphere if necessary, about the monitoring of nuclear explosions set off by the Soviet Union, and about the continuance of underground testing. Both the Senator from Georgia [Mr. RUSSELL], and the Senator from Mississippi [Mr. STENNIS] replied that the responses from the necessary agencies indicated that our preparedness was being maintained and that the safeguards discussed during debate over the treaty were being kept in effect. But I think that it is necessary that the administration and the committees charged with this responsibility inform the Congress and its committees whether these requirements are being firmly maintained. The safety of our country depends upon this knowledge.

The confrontation between the United States and the Soviet Union results from

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the objectives of the Soviet Union. It exists also because of the unwillingness of the Soviet Union to resolve, with justice, the issues which cause the arms race and continue to bring the threat of war. While there is no proof that the Soviet Union would agree to any solutions of these issues, I think that the United States must continue its efforts to reach honorable and just agreements so that we may reach the point where there is assurance that this generation and future generations can avoid the nuclear destruction of civilization. We must continue to maintain our safeguards against any breach of the treaty, and we must continue to insist upon advances toward settlements of differences, with the purpose of further reducing the risk of nuclear war.

Mr. NELSON. Mr. President, a year ago today the Senate voted 80 to 19 to approve the limited nuclear test ban treaty. In that vote we testified our support for the efforts of the late President Kennedy to find ways to preserve peace with prudence and responsibility. On the first anniversary of this historic vote, I believe we should pause to consider its significance for today.

For 19 years now, every President of the United States has been acutely aware of the realities of atomic power. They have been acutely aware that atomic power has enabled us to deter Soviet aggression; but they have also been acutely aware that with the advent of the nuclear bomb, the world as we had known it had forever changed.

The nuclear bomb cannot be considered just another weapons development, no matter how small it may be. As the Secretary of the Army stated recently:

Our smallest nuclear weapon has many times the yield of the blockbusters dropped by World War II Flying Fortresses.

This is to say nothing of the effects of radioactive poisoning. And President Johnson said recently in Seattle:

The total number of Americans killed in battle from the Revolution until tonight is a little over 526,000 people. Today a single nuclear weapon can kill more than 526,000.

Our experts tell us as of today that a full-scale nuclear exchange between the East and the West would kill almost 300 million people around the world, and in the midst of that terror and tragedy we could expect that weapon after weapon would soon engulf a portion of mankind. A cloud of deadly radiation would drift and destroy, menacing every living thing on God's earth, and in those unimaginable hours unborn generations would forever be lamed.

These awesome horrors could be triggered by the firing of the smallest tactical nuclear weapon we have—a weapon that a member of this body, who should know better, has had the audacity to term "conventional."

The realities of the nuclear age have thus far prompted every administration, whether Democratic or Republican, to strive to bring nuclear weapons under control—to work for balanced and verifiable arms control and arms-reduction agreements. The limited nuclear test ban treaty, approved a year ago by the Senate is today such an agreement.

A test ban was first proposed by the Eisenhower administration. More than three-quarters of the Republican Senators, as well as four-fifths of the Democrats, voted for it. I am sure this overwhelming bipartisan support reflects the sentiments of the vast majority of the American people, whatever their political persuasion. This augurs well for future efforts to enhance our security through the ultimate elimination of ultimate destruction, for, as President Johnson has said:

We must learn to live with each other, or we will destroy each other.

Mr. JAVITS. Mr. President, the Eisenhower administration first proposed a nuclear test ban agreement in 1958.

The Republican national platform of 1960 stated:

We advocate an early agreement by all nations to forego nuclear tests in the atmosphere, and the suspension of other tests as verification techniques permit.

Subsequently, on September 24, 1963, exactly 1 year ago today, over three-fourths of the Republicans in the U.S. Senate voted for the limited nuclear test ban treaty. I am proud to have been among this overwhelming majority.

Mr. President, this step toward peace represented a responsible choice. It grew out of an initiative undertaken during the last Republican administration and was concluded under a Democratic administration. It was not an echo of partisan foreign policy, but a collective judgment by responsible Americans. This is as it should be on a matter so important to peace and national security as the control and reduction of arms.

The threat of nuclear war is a formidable one. This country possesses the most powerful military establishment in the world. We have been forced into a posture of military deterrence by the Communist threat. But we are not the only country capable of inflicting nuclear devastation. In a nuclear conflict, we could destroy more of the Soviet Union than they could destroy of us but we would still face the prospect of suffering untold casualties and destruction at home. This is not the way to victory for freedom and Western civilization. Safeguarded alternatives to the arms race must be pursued if we are to build true peace and security. This fact has been recognized by Republicans and Democrats alike. It was recognized by President Eisenhower. In an address to the Nation on May 25, 1960, he said:

All of us know that, whether started deliberately or accidentally, global war would leave civilization in shambles. This is as true of the Soviet system as of all others. In a nuclear war there can be no victors—only losers. Recognition of this mutual destructive capability is the basic reality of our present relations.

First, we must keep up our strength. So doing, we can make it clear to everyone that there can be no gain in the use of pressure tactics or aggression against us and our allies.

Second, we must continue businesslike dealings with the Soviet leaders on outstanding issues, and improve the contacts between our own and the Soviet peoples, making clear that the path of reason and

commonsense is still open if the Soviets will but use it.

I have in mind, particularly, the nuclear test and disarmament negotiations. We shall not back away from the efforts or commitments that we have undertaken.

Nor shall we relax our search for new means of reducing the risk of war by miscalculation and of achieving verifiable arms control.

Mr. President, I subscribe to this philosophy and I hope, on this first anniversary of the Senate vote on the test ban treaty, that "the path of reason and commonsense" of which President Eisenhower spoke—safeguarded like the test ban treaty—will continue to prevail in our negotiations with the Soviet Union.

Mr. HART. Mr. President, 1 year ago today the Senate ratified the nuclear test ban treaty, and today the air is cleaner because we did. There was a clear sense of history in this Chamber when the roll was called on the treaty: 80 yeas to 19 nays. I was convinced then, as I am now, that the treaty was in the best interest of this Nation and of all mankind. Nothing has happened in the intervening 12 months to shake that conviction.

The vote was a bipartisan one, with the majority of both Democrats and Republicans voting for the treaty. Indeed the whole effort for this measure of international control in the life-and-death issue has had the wholehearted support of the leaders of both parties, beginning with Adlai Stevenson, continuing with President Eisenhower, and climaxing with the treaty under President Kennedy. And let us not forget the year-in, year-out untiring and indomitable leadership in this field by the chairman of the Disarmament Subcommittee, Senator HUMPHREY.

And so we celebrate today an achievement in negotiations which resulted from what often seemed futile talk.

But peace in this world cannot be won by some one giant, magic step; we move toward it in a series of many seemingly small steps, of which this one was notable.

This vote of a year ago had its political overtones, as do most significant public actions. In rereading the Senate debate, I was struck by a colloquy which took place on September 23, 1963, between the distinguished senior Senator from California, the Republican whip—who voted for ratification—and the distinguished junior Senator from Arizona—who voted against. The colloquy included these questions and answers:

Mr. KUCHEL. Let me ask my friend from Arizona whether he favors severance of diplomatic relations by the United States with the Soviet Union?

Mr. GOLDWATER. Yes; I have expressed myself on that point since 1934.

Mr. KUCHEL. Let me ask the Senator whether this is a correct statement of what he said the other day in the State of California: "I don't give a tinker's dam what the rest of the world thinks about the United States, as long as we keep strong militarily."

Mr. GOLDWATER. "The Senator has read what I said. I meant it. I have been chastised for using the word 'dam.'"

Mr. KUCHEL. I ask my friend from Arizona whether he approved of President Eisen-

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hower's moratorium, (i.e., on nuclear testing)?

Mr. GOLDWATER. I did not at that time. I said I did not think it was wise to do that. I believe the Senator from California was not present in the Chamber when I said that perhaps I have been too close to the military and perhaps lean too heavily in that direction.

Mr. President, this exchange takes on new significance today. We celebrate the Senate action of a year ago. We believe the world is a little better because of it. And we like to think that additional forward steps will be taken in the years ahead. This is at the heart of the current national political contest. I hope the implications of the debate and the vote of a year ago will be recognized by the people of America as they decide on November 3 the course our country shall follow in our search for peace.

AGENCY DECISIONMAKING

Mr. DIRKSEN. Mr. President, Mr. Philip Elman, a member of the Federal Trade Commission, spoke before the Federal Bar Association in Washington, D.C., on September 11, 1964, on the subject "Agency Decisionmaking: Adjudication by the Federal Trade Commission." This subject is of high interest to me and, I think, to all members of the Subcommittee on Administrative Practice and Procedure of the Committee on the Judiciary. I ask unanimous consent that Commissioner Elman's address be printed as a part of my remarks.

There being no objection, the address was ordered to be printed in the RECORD, as follows:

AGENCY DECISIONMAKING: ADJUDICATION BY THE FEDERAL TRADE COMMISSION

(Remarks by Philip Elman, Federal Trade Commissioner, before the Federal Bar Association, Washington, D.C., Sept. 11, 1964)

The distinctive characteristic of the administrative process is its blending of different functions and powers in a single agency. The basic duty of an administrative agency is to implement, using the wide variety of tools given it by Congress, the regulatory policies established by statute. The primary task of the Federal Trade Commission, for example, is to prevent the use in interstate commerce of unfair, deceptive, and anticompetitive business practices. The Commission has been empowered to perform this task in various ways: it can investigate; it can prosecute; it can adjudicate; it can guide and advise; it can conduct and publish economic studies; and it can issue rules and statements of policy.

This fusion of functions has raised questions as to the integrity, as well as the effectiveness, of the administrative process. I should like to explore with you today, with particular reference to the Federal Trade Commission, the agency I know best, one of those questions: May an administrative agency, which would appear to be so different from an institution from a court, be depended upon to discharge the function of adjudication fairly and impartially?

Administrative adjudication is a term sometimes used loosely; but the Federal Trade Commission has one function which is indisputably judicial in character. If the Commission has reason to believe that a person is violating any of the laws it administers, and if it appears that a proceeding would be in the public interest, the Commission issues a formal complaint. The proceeding

that follows before a hearing examiner is, with minor variations, similar to a court action governed by the Federal Rules of Civil Procedure. If the Commission, on review of the examiner's decision, finds that the alleged violations of law have been proved, it can (subject to judicial review of its decision) apply sanctions similar to those of a court of equity.

As in a judicial proceeding, the agency's decision must be based on the record; findings must be supported by the evidence; and the burden of proof rests upon the charging party. The basic differences between judicial and administrative adjudication are not differences of procedure; they are differences in the institutional environment in which adjudication takes place. Adjudication is the sum and substance of the judicial process, but it is only a part, and not always the largest or most important part, of the administrative process.

The judicial process is designed to insure that the judge be a neutral and disinterested trier of facts. The ideal of the judge is a detached, even aloof, arbiter of controversies in whose outcome he has no interest other than that of applying the law fairly and evenly-handedly. A judge is strictly insulated from the initiation and prosecution of cases. Ordinarily, he has but limited control of his docket. And, assuming his jurisdiction is general, a judge rarely will acquire an expert's knowledge of the matters coming before him—which helps to assure that he will approach each new case with an open mind.

In comparison to judges, agency members have a more active and affirmative commitment to achieve the goals and effectuate the policies declared by Congress; and their success is measured by the results the agency achieves in striving to attain those positive objectives. Agency members, moreover, are expected to be experts, bringing to each case a specialized knowledge informed by experience. Such knowledge and experience is not, and should not be, confined to the record of a particular case.

Even if we go no further, it is apparent that the administrative process, in not shielding agency members, as judges are shielded, from responsibility for producing successful results in advancing the policies of the laws allegedly violated, complicates the task of adjudicating particular cases. But there are other stresses and strains on agency adjudication that must be noted. I do not refer to improper external pressures, conflicts of interests, ex parte communications, and the like. I have in mind, rather, those subtle institutional influences which no laws, regulations, or codes of ethics can remove, and which will best be overcome if they are forthrightly recognized.

It is by no means unusual for an agency to decide that a complaint which it issued should be dismissed because the evidence or the legal theory on which it was based did not stand up under adversary attack. Of the appeals decided by the Federal Trade Commission in the past year, for example, about one-third resulted in dismissals of the complaint. Still, I think it is likely that, in general, decisions of this kind are less reluctantly made by judges than by the members of an agency. Not having issued the complaint, the judge need not concern himself with whether a subsequent dismissal will be construed as an admission that a mistake was made in issuing the complaint and that the public's (not to mention the respondent's) time and money have been wasted in a fruitless proceeding. Nor need he have any apprehension that dismissal of the case will impair staff morale.

Also, a judge is not subjected to the mischievous notion that a case ought not be dismissed because judicial review is thereby precluded, or the equally mischievous notion that the success of an agency in carrying out

its statutory responsibilities is measured by the number of cease-and-desist orders it enters.

Considerations of this sort illustrate the perils to completely fair and impartial agency adjudication. There are, however, within the existing framework of the administrative process, a number of steps that can and should be taken to assure greater fairness and impartiality.

First of all, case-by-case adjudication as a technique of administrative law enforcement should be substantially deemphasized. As I have explained more fully elsewhere, litigation is an intolerably slow, costly, clumsy, fragmentary, and inadequate process for resolving the delicate and complex economic issues that characterize the field of trade regulation. I have therefore urged the Commission to make more use of the other regulatory tools available to it—and, in the past 3 years, it has been doing so with increasing frequency. The problem of adjudicative fairness could to a considerable extent be avoided altogether if the agencies utilized nonadjudicatory techniques, such as rulemaking, more frequently. However, some problems yield only to the case-by-case method of inclusion and exclusion; and adjudication is the method of policy formulation that many agencies, including the Federal Trade Commission, know best.

The essential and nondelegable duty of an agency member is in the area of policy formulation. Therefore, he is helped, not hurt, by being relieved of the responsibility for weighing specific evidence against designated persons in particular cases. Both at the complaint-issuance and appeal-deciding stages, internal delegations can do much to assure greater fairness in adjudication. I have proposed, and I propose again, that the Commission make a limited delegation of authority with respect to the issuance of complaints. Specifically, the members of the Commission should not, at the complaint-issuance stage, undertake to make their own assessment of the evidence regarding violation of law. They should limit their inquiry to considerations of law, policy, and public interest, leaving to the Bureau Directors the determination whether there is sufficient evidence of violation. If members of the Commission did not review the investigative files at the complaint-issuance stage, they would no longer be open to the charge of acting as prosecutor and judge in the same case. Instead, they would be in approximately the position of a judge who, in overruling a demurrer, finds only that the complaint states a cause of action—not that it has been proved or can probably be proved.

Moreover, a Commissioner who spends much of his time reviewing investigative files at the precomplaint stage may be disabling himself from discharging those policymaking and adjudicative responsibilities which are his alone and cannot be delegated to others.

At the appeal-deciding stage, I would accord greater deference to the findings made by hearing examiners on disputed issues of fact whose resolution depends on evaluation of the evidence rather than on the accumulated experience and special knowledge of the agency. A hearing examiner should be regarded as the agency's special master on fact questions. The independence of hearing examiners, specifically their isolation from the complaint-issuance process, is a substantial safeguard against unfairness in administrative adjudication. We strengthen that safeguard, and at the same time help the agency members concentrate on their basic law- and policy-formulation function, by attaching greater finality to examiners' findings on strictly factual or evidentiary questions. Agency members should, so far as possible, avoid inquiry into such questions. To the extent that

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Remarks: Attached is an extract from the Congressional Record of 24 September containing Senator Pastore's remarks on "First Anniversary of Senate Vote on Limited Nuclear Test Ban Treaty."



Assistant Legislative Counsel

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